

## BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 19460
[Redacted]	)	
Petitioner.	)	DECISION
	)	
	)	

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On December 21, 2005, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) [Redacted](petitioner) proposing sales tax, use tax, penalty, and interest for the period April 1, 2003, to October 31, 2005, in the total amount of \$45,385.

On January 6, 2006, a timely appeal and petition for redetermination was filed by the petitioner. An informal hearing has not been requested by the petitioner. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

A review of the petitioner's sales tax account showed total sales of \$9,292 with \$8,742 claimed as nontaxable sales during the audit period. The total sales tax paid was \$33. Credits were claimed [Redacted] in the amount of \$5,022.

The petitioner failed to reply to repeated contact attempts via mail and phone to provide an explanation of this unusual situation and to supply copies of invoices to verify the refunds. A NOD was issued on the best information available. In this case, the \$5,022 tax adjustments [Redacted] was assumed to be tax paid [Redacted] purchased for resale. The auditor backed into the purchase price [Redacted] from the \$5,022 tax giving approximately \$84,000 in purchases over the two year period. [Redacted] purchases were estimated at 20% of sales price to establish \$542,500 in estimated sales.

Due to the petitioner's failure to provide the documentation to establish his claims for refunds, a separate schedule was created to recapture the \$5,022 of refunds paid by the Commission to the petitioner.

The petitioner protested the NOD stating that he had spent thousands of dollars on materials to build and rebuild [Redacted]. The petitioner stated that his business was a hobby and that gross sales were not more than \$2,000 per year. The petitioner disagreed with the entire amount of the NOD.

The auditor met with the petitioner on January 24, 2006. The petitioner brought a "box of receipts" and other assorted papers. The petitioner stated that he had dumped the receipts from a garbage bag into the (24" x 24" x 24") box in order to bring them to the Commission. The petitioner and the auditor discussed what the petitioner had claimed as refunds, and the petitioner admitted it was likely that he put the "taxable" amount on line 7 for adjustments rather than the "tax" amount. By doing this, the petitioner received refunds approximately 20 times larger than he meant to claim. The petitioner was asked to organize his receipts and produce the receipts for the qualifying purchases by March 1, 2006.

After meeting with the petitioner, the auditor accepted the petitioner's explanation that no substantial taxable retail sales had been made. The auditor is of the opinion that the sales tax NOD should be reduced to only recapture the erroneously claimed refunds.

On February 28, 2006, the petitioner e-mailed that he was in the midst of a crisis and needed more time to gather the receipts. The auditor established a new due date of March 30, 2006. The auditor attempted to contact the petitioner after he missed his due date but had received no acknowledgement as of May 24, 2006. The TDB forwarded the file to the Legal/Tax Policy Division for further review.

On June 23, 2006, the Tax Policy Specialist (policy specialist) sent the petitioner a letter to inform him of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioner on July 28, 2006. The petitioner did not respond to either letter.

Beyond those issues addressed above, the petitioner has not provided the Commission with information to establish that the amounts asserted in the NOD, as adjusted, are incorrect. As a result, the Commission will uphold the NOD, as adjusted. A determination of the State Tax Commission is presumed to be correct. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the petitioner to show that the deficiency is erroneous. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

WHEREFORE, the Notice of Deficiency Determination dated December 21, 2005, is hereby MODIFIED in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
4/1/03-10/31/05	\$5,121	\$256	\$875	\$6,252

Interest is calculated through May 24, 2007, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]  
[Redacted]  
[Redacted]

Receipt No.

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